A Partnership Including
Professional Corporations
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000
Facsimile 202-756-8087
http://www.mwe.com

Shirley S. Fujimoto
Attorney at Law
sfujimoto@mwe.com
202-756-8282

MCDERMOTT, WILL & EMERY

April 16, 2003

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Notice of *Ex Parte* Meeting: The 4.9 GHz Band Transferred from Federal Government Use, WT Docket No. 00-32

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this is to notify you that Shirley S. Fujimoto and Jeffrey L. Sheldon, representing Cinergy Corporation and Consumers Energy Company had separate meetings yesterday with with Bryan Tramont, of Chairman Powell's office, and Barry Ohlson, of Commissioner Adelstein's office, to discuss the issues in the above-referenced docket.

We discussed the positions advanced by these utility companies in their written comments in this proceeding, and in particular the utility communications requirements that could be met in this spectrum and the corresponding need for the Commission to define licensing eligibility as to permit direct licensing of utility communications systems in this band without the need for government sponsorship as in the 700 MHz band. Attached is a copy of the written presentation used in these discussions.

We also expressed support for the alternative proposal raised in the *Further Notice of Proposed Rule Making* in this docket by which a portion of the 4.9 GHz band would be allocated for direct licensing by "public safety radio service" eligibles, as defined in Section 309(j)(2) of the Communications Act, with licensing in the remainder of the band limited to entities meeting the definition of "public safety services" in Section 337(f). We noted that allocating the band in this manner would ensure that "public safety service" eligibles have access to the entire allocation, while also providing a direct licensing option for utilities and other Critical Infrastructure licensees meeting the definition of "public safety radio services." Opening the

band to both types of licensees will help reduce equipment costs, and provide opportunities for jointly-developed radio networks. We opposed opening the band for commercial use or for "leasing" of spectrum by public safety entities to other users, and instead recommended adoption of rules that would permit non-profit, cost-sharing opportunities for joint system development as has been successfully employed by a number of public safety agencies and utilities in the 800 MHz band.

Pursuant to the Commission's Rules, one copy of this notice is being filed electronically with the Commission. If there are any questions concerning this matter, please let me know.

Very truly yours,

/s/ Shirley S. Fujimoto

Shirley S. Fujimoto

Attachment

cc: Bryan Tramont
Barry Ohlson

UTILITIES SHOULD BE GRANTED ELIGIBILITY
FOR LICENSING IN THE 4.9 GHZ BAND
WT DOCKET NO. 00-32

I. Utilities Have Need for Applications that Could be Met at 4.9 GHz

A. Utility spectrum needs were described in the Report of the Utility Spectrum Assessment Task Force (filed July 16, 1998 in RM-9267) and confirmed in NTIA's January 2002 Report on "Current and Future Spectrum Use by the Energy, Water, and Railroad Industries."

B. Utilities could use the 4.9 GHz band for applications such as the following:

1. Personal Area Networks and Vehicular Area Networks ((PAN/VAN) -- for *ad hoc*, short-range localized broadband coverage at work sites, such as when crews are pulling electrical lines or repairing gas pipelines.

2. Wireless Local Area Networks (WLANs) -- for on-scene incident control, allowing crews to transmit and receive incident-specific data such as information about hazardous materials, weather and atmospheric conditions, and environmental/equipment conditions. Would also allow use of real-time video from crews working on lines or in hazardous environments (*e.g.*, electrical vaults, substations or nuclear power plants) or to assist with damage assessment.

3. Wireless "Hot Spot" Location Devices -- for broadband delivery of mapping data and Geographic Information Systems, allowing field crews to have near real-time ability to acquire and update pole line records to account for dynamic changes in the electric system.

C. Utilities' broadband communications requirements have increased due to Homeland Security concerns and the emphasis on maintaining and safeguarding Critical Infrastructure assets.

II. Utilities and Other Critical Infrastructure Industries Should Be Eligible for Direct Licensing at 4.9 GHz

A. In the *FNRPM*, the FCC correctly noted that the services provided by utilities "involve potential hazards whereby reliable radio communications is an essential tool in either avoiding the occurrence of such hazards, or responding to emergency circumstances," and that utilities "need reliable communications in order to prevent or respond to disasters or crises affecting their service to the public."

B. Eligibility for 4.9 GHz should be based on 309(j)(2) of the Act, which reflects Congress's position that utilities and other critical infrastructure industries should have access to

adequate spectrum resources to fulfill their public safety/public service obligations without being compelled to compete for "commercial" licenses.

C. Section 337(f) is limited by its own terms to establishing eligibility for 24 MHz of new bandwidth at 700 MHz and does not constrain the FCC's ability to open other bands for use by both traditional public safety and Critical Infrastructure Industries.

D. Non-government licensees should not be compelled to secure government "sponsorship" in order to secure licensing.

1. State and local "public safety" agencies are not responsible for day-to-day provision of essential public services such as electricity, gas, and water, and have no incentive to "sponsor" utilities for radio system licensing.

2. Utilities would be reluctant to make investment in radio infrastructure if their use is essentially "secondary" to other users and subject to license revocation if the requisite government "sponsorship" is withdrawn.

3. Unlike the 700 MHz band, there are no statutory restrictions on direct licensing of non-governmental Critical Infrastructure Industries at 4.9 GHz.